THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on :02.03.2007

WP(C) No.1586/2007

CENTRAL BANK OF INDIA ...Petitioner

- versus -

UNION OF INDIA AND OTHERS ...Respondents

Advocates who appeared in this case:

For the Petitioner	:	Mr A. S. Chandhiok, Sr. Advocate with Mr S. N. Relan, Rajbir Singh and Ms Sonia
For the Respondent No.1	:	Mr Ashwani Bhardwaj with Mr Shishir Singh
For the Respondent No.3	:	Mr Ajay Kapur with Mr G. Panmei

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in Digest? YES

BADAR DURREZ AHMED, J (ORAL)

CM NO. 2929/2007 in WPC 1586/2007

Allowed subject to all just exceptions.

WPC 1586/2007

1. This writ petition has been filed by a Public Sector Undertaking under the Central Government. The petitioner is the Central Bank of India. The

respondent No.3 is also a Public Sector Undertaking under the Central Government. The respondent No.3 is the India Tourism Development Corporation Ltd. (ITDC). The issue is with regard to the premises taken on licence by the Central Bank of India from the ITDC in the Ashok hotel run by the ITDC at Chanakya Puri, New Delhi. Proceedings have been taken at the instance of the ITDC under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The proceedings are pending before the Estate Officer.

2. The primary issue that is raised is whether the respondent No.3 could have initiated those proceedings against a Public Sector Undertaking, itself being a Public Sector Undertaking under the same Central Government without first getting a clearance from the High-Powered Committee. The second question that arises is whether the petitioner could have filed this writ petition before this Court without having taken a clearance of the High-Powered Committee. In either event, if a reference to the High-Powered Committee is to be made, the matter would not be with either the Estate Officer or before this Court and would first require the clearance of the High-Powered Committee.

3. The learned counsel for the respondent No.3 straightaway referred to a decision of the Supreme Court in the case of ***Steel Authority of India Ltd. v. Life***

Insurance Corporation of India*: *AIR 1997 SC 2590. That was a case in which the Steel Authority of India had taken on rent a premises on 4th Floor of Jeevan Deep Building, Parliament Street, New Delhi, which belonged to the Life Insurance Corporation. Since the Steel Authority of India had not vacated the premises, action was taken at the instance of the Life Insurance Corporation under the provisions of the said Act. The question of whether a clearance of the High-Powered Committee was necessary or not arose before the Supreme Court as the matter ultimately reached there. The Steel Authority of India had contended that a reference to the High-Powered Committee ought to have been made. The Supreme Court, in the said decision, repelled this contention in the following manner:-

> "3. The object of issuing direction in those matters was to decide the fiscal disputes in case of major policy mattes to save the public money and courts valuable time, and disputes could amicably be settled between the Public Sector Undertaking and the Government of India or the State Governments. The intention was not to resolve the disputes like eviction of a Company or Public Undertaking under Public Premises (Unauthorised Occupants) Act; such petty disputes are not directed to be dealt with by the high level officers whose otherwise duty and time is of very important nature. Under these circumstances, the High Court has not committed any error warranting interference."

4. Undoubtedly, that was a decision of two Hon'ble Judges of the Supreme Court and subsequent in time to the decision in the case of ***Oil and***

Natural Gas Commission v. CCE*: *1992 Supp (2) SCC 437 and ***Oil and Natural Gas Commission v. CCE*: *1995 Supp (4) SCC 541***. However, the law has been stated and restated in several decisions of the Supreme Court including the decision of the Supreme Court in the case of ***Mahanagar Telephone Nigam Ltd. v. Chairman, Central Board, Direct Taxes*: *(2004) 6 SCC 431*** as follows:

> "8. Undoubtedly, the right to enforce a right in a court of law cannot be effaced. However, it must be remembered that courts are overburdened with a large number of cases. The majority of such cases pertain to government departments and/or public sector undertakings. As is stated in *Chief Conservator of Forests case*[5] it was not contemplated by the framers of the Constitution or CPC that two departments of a State or the Union of India and/or a department of the government and a public sector undertaking fight a litigation in a court of law. Such a course is detrimental to public interest as it entails avoidable wastage of public money and time. These are all limbs of the Government and must act in coordination and not confrontation. The mechanism set up by this Court is not, as suggested by Mr Andhyarujina, only to conciliate between the government departments. It is also set up for purposes of ensuring that frivolous disputes do not come before courts without clearance from the High-Powered Committee. If it can, the High-Powered Committee will resolve the dispute. If the dispute is not resolved the Committee would undoubtedly give clearance. However, there could also be frivolous litigation proposed by a department of the Government or a public sector undertaking. This could be prevented by the High-Powered Committee. In such cases there is no question of resolving the dispute. The Committee only has to refuse permission to litigate. No right of the department/public sector undertaking is affected in such a case. The litigation being of a frivolous nature must not be brought to court. To be remembered that in almost all cases one or the other party will not be happy with the decision of the High-Powered Committee. The dissatisfied party will always claim that its rights are affected, when in fact, no right is affected. The

5 (2003) 3 SCC 472

> Committee is constituted of highly placed officers of the Government, who do not have an interest in the dispute, it is thus expected that their decision will be fair and honest. Even if the department/ public sector undertaking finds the decision unpalatable, discipline requires that they abide by it. Otherwise the whole purpose of this exercise will be lost and every party against whom the decision is given will claim that they have been wronged and that their rights are affected. This should not be allowed to be done.
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> 9. In this case this is absolutely what has happened. The appellants wanted to approach the court only against a show-cause notice. It is settled law that against a show-cause notice litigation should not be encouraged. The decision of the High-Powered Committee, set out hereinabove, merely emphasises the well-settled position. It is an eminently fair and correct decision. The purpose of the decision was to prevent frivolous litigation. No right of the appellants is being affected. It has been clarified that the appellants could move a court of law against an appealable order. By not maintaining discipline and abiding by the decision the appellants have wasted public money and time of the courts. The clarificatory order, relied upon by Mr Andhyarujina, clarifies in para 5 as to what is to happen if clearance is not given by the Committee. It is set out that in the absence of the clearance the proceedings must not be proceeded with. This position is further clarified in *Chief Conservator of Forests case*[5] where again this Court has held that the decision taken by such a Committee is binding on all departments concerned and it is the stand of the Government.
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> (underlining added)

5. There is another decision in the case of ONGC itself and that is reported in (2004) 6 SCC 437. This decision had been rendered by a Bench comprising of three Hon'ble Judges of the Supreme Court and would obviously have precedence over all other decisions which have been rendered by Benches

comprising of two Hon'ble Judges of the Supreme Court. In this decision, the entire law had been reviewed and it has been noted in paragraph 2, referring to the earlier ONGC decision reported in 1995 Supp (4) SCC 541, that the Cabinet Secretariat has issued instructions from time to time to all departments of the Government of India as well as to public sector undertakings of the Central Government to the effect that all disputes, "*regardless of the type*", should be resolved amicably by mutual consultation or through the good offices of empowered agencies of the Government or through arbitration and "*recourse to litigation should be eliminated*". In paragraph 3 of this decision it is noted that the purpose of setting up this High-Powered Committee was to ensure that, as far as possible, the controversies between a Ministry and a Ministry of the Government of India, a Ministry and a public sector undertaking of the Government of India and between public sector undertakings themselves are resolved by recourse to the High-Powered Committee and that time-consuming and expensive litigation is avoided. At the end of paragraph 4, the Court observed as under:-

> "It is abundantly clear that the machinery contemplated is only to ensure that no litigation comes to court without the parties having had an opportunity of conciliation before an in-house committee."
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> (underlining added)

A reading of the said decision makes it abundantly clear that the direction applies even to pending matters before any court or tribunal. In paragraph 7 of the said decision, the Supreme Court, approving of its decision in the case reported in 1995 Supp (4) SCC 541, held that it shall be the obligation of every court and every tribunal where such a dispute is raised hereafter to demand a clearance from the Committee in case it has not been so pleaded and in the absence of the clearance, the proceedings would not be proceeded with.

5. In the present case, there is no clearance taken either by the respondent No.3 or by the petitioner and, therefore, this writ petition cannot be entertained any further. The petitioner as well as the respondent No.3 are directed to approach the High-Powered Committee for a clearance for their respective litigations. Till such clearance is obtained, the proceedings before the Estate Officer cannot, also, continue.

This writ petition stands disposed of.

Dasti.

BADAR DURREZ AHMED
(JUDGE)

March 02, 2007
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